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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,644	11/24/2003	Neil Gilmartin	030380 (BLL-0123)	4704
36192 7590 08/20/2007 CANTOR COLBURN LLP - BELLSOUTH 55 GRIFFIN ROAD SOUTH BLOOMFIELD, CT 06002			EXAMINER GOODCHILD, WILLIAM J	
		ART UNIT 2145	PAPER NUMBER	
		MAIL DATE 08/20/2007	DELIVERY MODE PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

m/n

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/720,644	GILMARTIN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	William J. Goodchild	2145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 November 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-10 and 12-18 is/are allowed.
- 6) Claim(s) 11 is/are rejected.
- 7) Claim(s) 1-10, 12-18 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 November 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>06/18/2007</u>  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 1-18 are objected to because of the following informalities:

Claim 1, line 15, the phrase "a count of paths" has been defined in claim 1, line 10, it is suggested to change the phrase to –said count of paths--, in order to improve the clarity of the claim language.

Claim 12, line 20, the phrase "a count of paths" has been defined in claim 12, line 14, it is suggested to change the phrase to –said count of paths--, in order to improve the clarity of the claim language.

Claim 18, line 18, the phrase "a count of paths" has been defined in claim 18, line 13, it is suggested to change the phrase to –said count of paths--, in order to improve the clarity of the claim language.

Any claim not specifically addressed above, is being objected to as incorporating the deficiencies of a claim upon which it depends.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 11 is rejected under 35 U.S.C. 102(e) as being anticipated by (Saint Etienne et al); (hereinafter Saint Etienne), (US Publication No. 2003/0149788).

In reference to claim 11, Saint Etienne teaches a method / system comprising:  
receiving a plurality of links for a VLAN, each said link including a latency value  
[Saint Etienne, paragraph 58],

a count of access switches on a first side of said link [Saint Etienne, paragraph 4]  
and

a count of access switches on a second side of said link [Saint Etienne,  
paragraph 4]; and  
calculating a multi-point to multi-point VLAN latency measure for the VLAN  
responsive to said links [Saint Etienne, paragraph 57].

3. Claim 11 is rejected under 35 U.S.C. 102(e) as being anticipated by (Sistanizadeh et al), (hereinafter Sistanizadeh), (US Patent No. 6,681232).

In reference to claim 11, Sistanizadeh teaches a method / system comprising:

receiving a plurality of links for a VLAN, each said link including a latency value [Sistanizadeh, column 19, lines 15-20, measures latency over two or more different network legs, column 12, lines 43-46],

a count of access switches on a first side of said link [Sistanizadeh, column 19, lines 15-20] and

a count of access switches on a second side of said link [Sistanizadeh, column 19, lines 15-20]; and

calculating a multi-point to multi-point VLAN latency measure for the VLAN responsive to said links [Sistanizadeh, column 19, lines 15-20].

#### Allowable Subject Matter

4. The following is an examiner's statement of reasons for allowance: None of the prior art references teach (alone or in combination) all the limitations together, within the independent claims 1, 12 and 18. For example, the independent claims contain limitations within a multi-point VLAN environment of multiplying a count of access switches on a first side of a link by a count of switches on a second side of said link to derive a count of paths, multiplying the count of paths by a latency value to derive a total latency, incrementing a latency counter by the total latency value and dividing the latency counter by the count of paths to derive a multi-point VLAN latency measure.

Examiner agrees that the limitations of the independent claims are allowable subject matter over the prior art, in light of the specification [Specification, Figure 2, paragraphs

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21-23]. The prior art teaches VLAN latency measuring, but does not show the specific combination of limitations. Therefore, the combination of the limitations, within the multi-point VLAN environment, is allowable subject matter, in light of the specification. The independent claims 1, 12 and 18 (and their dependent claims) are allowable, since the claim language discloses this combination of limitations in accordance with the specification, over the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claims 1-10 and 12-18 are allowed.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William J. Goodchild whose telephone number is (571) 270-1589. The examiner can normally be reached on Monday - Friday / 9:00 AM - 5:00 PM EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

WJG  
08/13/2007



JASON CARDONE  
SUPERVISORY PATENT EXAMINER